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16 UNITED STATES DISTRICT COURT

17 DISTRICT OF NEVADA

18 B.H. OF NEVADA, INC. d/b/a BLUE
19 HAVEN POOLS, a Nevada corporation,

20 Plaintiff,

21 vs.

22 QBE SPECIALTY INSURANCE
23 COMPANY; a North Dakota corporation;
24 DOES 1 through X, and ROE
25 COPORATIONS 1 through X, inclusive,

26 Defendants.

CASE NO. 2:19-CV-194

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(b)
DIVERSITY**

27 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

28 PLEASE TAKE NOTICE that Defendant QBE Special Insurance Company ("QBE")

1 hereby removes to this court the state court action described below, pursuant to the provisions
2 of 28 U.S.C. § 1446, on the basis of diversity of citizenship pursuant to 28 U.S.C. § 1441(b) as
3 follows:
4

5 1. On or about December 20, 2018, Plaintiff B.H. of Nevada, Inc., dba Blue Haven
6 Pools (“Blue Haven Pools”), electronically filed an action in the Eighth Judicial District Court,
7 Clark County, Nevada, titled *B.H. of Nevada, Inc., d/b/a Blue Haven Pools v. QBE Specialty*
8 *Insurance Company, DOES I through X, and Roe Corporations I through X, inclusive*, Case
9 No. A-18-786389-C. A copy of the Complaint is attached as Exhibit “A”.
10

11 2. The Complaint alleges that Defendant QBE failed to defend and indemnify
12 Plaintiff Blue Haven Pools against a construction defect action that was filed by non-party
13 Arthur Birzenck on or about November 30, 2011. Complaint, ¶¶ 9, 12, 15. The Complaint
14 alleges causes of action for breach of an insurance contract, breach of the covenant of good
15 faith and fair dealing, violations of Nevada Revised Statute 686A.310, and declaratory
16 judgment.
17

18 3. The first date upon which Defendant QBE received a copy of the said Complaint
19 and the Summons was on January 8, 2019 when Defendant QBE was served by mail via CT
20 Corporation System. The service included a copy of said Complaint, a Nevada Department of
21 Business and Industry, Division of Insurance letter, dated January 3, 2019, and a copy of the
22 Summons from the State Court. A copy of the Service of Process and the January 3, 2019 letter
23 from the Nevada Department of Business and Industry, Division of Insurance is attached as
24 Exhibit “B”. The Summons issued in the State Court is attached as Exhibit “C”.
25

26 4. This lawsuit is a civil action of which this Court has original jurisdiction under 28
27 U.S.C. § 1332 and is one which may be removed to this Court by Defendants pursuant to the
28

1 provisions of 28 U.S.C. § 1441(b), in that it is a civil action between citizens of different states
2 and the matter in controversy exceeds the sum of \$75,000, exclusive of interests and costs,
3 because Plaintiff Blue Haven Pools is seeking at least \$102,500 from Defendant QBE, which
4 is the amount Blue Haven Pools allegedly paid for the settlement of a construction defect
5 lawsuit filed by Arthur Birzneck. Complaint ¶¶ 9, 14.
6

7 5. Complete diversity of citizenship exists in that Plaintiff Blue Haven Pools is a
8 Nevada corporation. Complaint ¶ 1. The Complaint incorrectly alleged that QBE was a
9 Wisconsin corporation. Complaint ¶ 2. Defendant QBE is a North Dakota corporation.
10 Therefore, there is complete diversity. Defendant QBE is the only Defendant in this matter,
11 and, therefore, is the only Defendant who has been served with a
12 Summons and the Complaint.
13

14 6. The Complaint also names Does 1 through X and Roe Corporations. Under 28
15 U.S.C. § 1441(b), removal based on diversity of citizenship under section 1332(a), the citizenship
16 of defendants sued under fictitious names shall be disregarded.
17

18 7. A substantial part of the events or omissions giving rise to the *B.H. of Nevada,*
19 *Inc., d/b/a Blue Haven Pools v. QBE Specialty Insurance Company, et al.* action occurred in
20 Clark County, Nevada. Thus, the instant action may be assigned to this court sitting in the U.S.
21 District Court of Nevada.
22

23 8. Written notice of the filing of this Notice will be given to all adverse parties as
24 required by law.

25 9. A true and correct copy of this Notice will be filed with the Eighth Judicial District
26 Court, Clark County, Nevada as required by law.

27 WHEREFORE, Defendant QBE requests that the Court remove this action from aforesaid
28

1 State Court, in which it is now pending, to the United States District Court for the District of
2 Nevada.

3 DATED: February 1, 2019

By: /s/ George D. Yaron

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